APPENDIX

APPENDIX

Publicly Funded Programs Providing Legal Services to the Poor Cannot Supply Bonds for Litigation Purposes

At the request of the Center for Social Welfare Policy and Law, Community Action for Legal Services undertook a survey to determine the experiences of the various legal services programs across the country with respect to requirements for posting bonds in civil cases brought on behalf of indigents. Pursuant to this undertaking, approximately thirty legal services programs, representing thirty states, were mailed a form letter and questionnaire (included within this appendix) requesting information in regards to the availability of legal services for the poor in situations requiring the posting of a bond. Insufficient time made it impossible for all but a few programs to respond. Precise statistical tabulation of these responses was impossible. The responses obtained, however, did outline the effects which the bond requirements posed to the successful operation of a legal services program.

Few of the programs actually posted bonds for litigation purposes. Partly, this is so because their programs decided to forego the suit because of the expenses and difficulties involved, and partly because some states have permitted waiver of the requirement. New York Civil Practice Law and Rule, §5519 (a) is illustrative on the latter point. To obtain, upon appeal, a stay of enforcement of a money judgment *without a court order,* the appellant is required to file an undertaking securing the judgment below. However, subsection (c) of Section 5519 allows a litigant an opportunity to obtain a stay by court order. Presumably this is without posting an undertaking, although the statute

is not very clear on this point. That waivers have not been possible in all such cases where states have similar provisions is confirmed by the enclosed statements from legal services attorneys that they have terminated hundreds of cases as a consequence of the bond requirement.

From this limited response, it was quite evident that legal services programs were unable to budget funds for the cost of procuring bonds. This result is in line with the experience in New York City. Funds from the Office of Economic Opportunity simply are not sufficient to pay for bonds. The money for bonds invariably comes from general litigation funds. The availability of money is a very acute problem for the legal services program. The OEO News Summary of the War on Poverty, dated July 15, 1969, states that:

> "Two hundred thirty one *Legal Services Programs* have been helped in fiscal 1968 at a Federal cost of $34,739,443." News Summary, p. 5.

Certainly, thirty five million dollars is a small figure to finance the entire cost of civil litigation for the poor of the nation. If New York City's experience is a guide to the general financial condition of other legal services programs in the country, and we believe that it is, then there is a rather straightforward way to account for the minute sums available for the costs of bonds.

Here as elsewhere, legal services programs are grossly understaffed and, as a direct result of the understaffing, are encountering a severe caseload problem. This strain on manpower increases the need for additional lawyers and clerical workers. In New York City, there are ten legal services programs, operating under Community Action for

Legal Services. Each of these programs has requested additional funds for increases in staff and staff salaries. The pressures on the programs, in terms of the strain of their budgets, can best be seen through the operation of Mobilization for Youth, one of the programs in New York. Mobilization for Youth, or MFY as it is popularly called, employs twenty-one attorneys. These 21 attorneys are responsible for providing legal services to the poor in an area extending from the lower east side of Manhattan, near East 3rd St., to the west side, near W. 102nd St. The use of 21 lawyers to cover such a vast area is conceivable only in a poverty program. Starting salaries for lawyers on the MFY staff are approximately $8600 as compared to starting salaries of $15,000-$18,000 for lawyers in Wall St. law firms. MFY has a proposed budget of $835,690 for 1969-1970, personnel costs, including salaries and fringe benefits, account for $665,025, or approximately 80% of the budget. In the past five months, ending on May, 1969, MFY reported an intake of 2,848 new cases, or an average of 136 new cases per attorney. Of this figure, 1,594 cases were closed or withdrawn, leaving 4,320 cases, or 206 cases per attorney, still pending.

These conditions are representative of the problems faced by legal services programs in the City and in the United States. To permit precious funds to be diverted away from the main goal of obtaining more attorneys in order to meet the costs of posting bonds would be a disservice to the poor who have come to rely upon the legal services attorney.

ALABAMA

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

1. Amount of funds allocated to costs of bonds:

   The CAP Agency has a general fund for numerous purposes out of which they supply us bond money. However, we have no special fund designated specifically for bonds.

2. Amount expended for costs above:

   We have one case dealing with the double-rent bond and unlawful detainer suits and have bonded $624.00; we have appealed the same case on a $100.00 bond.

   In suits for preliminary injunctions, we have thus far spent $1500.00.

3. Short statement explaining why more funds are not budgeted for the cost of bonds:

   The Birmingham Legal Services Program was begun in January, 1969. At the time our budget was drawn, I assume that the necessity of bond money was not foreseen. However, let me clearly point out that the CAP Agency has been most generous with us. The money comes from them and not out of Legal Services budget.

4. Number of cases handled each month requiring a bond:

   In the last six (6) months, we have dealt with four cases requiring a bond.

5. Number of cases terminated because of inability to procure a bond: None.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client.

7. Statement of situations requiring the posting of a bond in your state. (Attached)

   A. Preliminary Injunctions; B. Appeal of unlawful detainer suits from General Sessions to Circuit Court; C. Detinue Suits in order to retain property; D. Appeal bonds in all appeal cases, in the amount guaranteeing the court costs accrued and the estimated court costs in the higher court, as well as guaranteeing the amount of judgment in the lower court.

   (These are the only situations I am familiar with personally.)

Linda S. Lombard
Legal Services Program Ensley Office
Birmingham, Alabama

AFFIDAVIT

It is most disturbing that a tenant can be evicted only five days after judgment is taken in an unlawful detainer suit. This procedure makes it most difficult to contest the filing of the double-rent bond when we wish to appeal the judgment to the Circuit Court. By the time I could get a hearing on a motion to suspend bond, or on a show-cause motion, the tenant would be out in the street.

It has thus far been impossible for me to contest the double-rent bond and the appeal bond required in unlawful detainer (eviction) cases, without detriment to my client.

Linda S. Lombard
Staff Attorney
Ensley Office
Legal Services Program

WITNESS: Virginia Hamilton

ARIZONA

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

1. Amount of funds allocated to costs of bonds:

   None

2. Amount expended for costs above:

   None

3. Short statement explaining why more funds are not budgeted for the cost of bonds:

   No funds allocated under our federal grants for bonds.

4. Number of cases handled each month requiring a bond:

   Approximately 12 per month.

5. Number of cases terminated because of inability to procure a bond:

   Approximately 70 per year.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client:

   It has in some cases. Affidavit attached.

7. Statement of situations requiring the posting of a bond in your state:

The situations most commonly affecting clients of the Maricopa County Legal Aid Society, Phoenix, Arizona, are, in the order of importance and frequency:

(1) Bond required to appeal a judgment from the Justice of the Peace Court to the Superior Court for trial de novo.

(2) Various appeal bonds.

Russell G. Sheley, Jr.
Maricopa County Legal Aid Society
Phoenix, Arizona

AFFIDAVIT

STATE OF ARIZONA,
COUNTY OF MARICOPA, *ss.*:

RUSSELL G. SHELEY, JR., Senior Staff Attorney, Maricopa County Legal Aid Society, Phoenix, Arizona, upon his oath deposes and says:

Based upon his personal experience, and upon information from other attorneys of this organization, which information he deems reliable, the necessity of posting bonds and the financial inability of a client to do so, sometimes prevents effective representation of the client.

RUSSELL G. SHELEY, JR.

SUBSCRIBED AND SWORN to before me this 2nd day of July, 1969.

Conception C. Padilla
Notary Public

My Commission Expires:

August 25, 1972

COLORADO

STATEMENT CONCERNING THE POSTING OF BONDS FOR STAYS, APPEALS, VACATING OF JUDGMENTS AND PROVISIONAL REMEDIES

1. Amount of funds allocated to costs of bonds:

Our office has no specific fund set aside for the cost of posting bonds. Our grant only allows a general litigation fund out of which we must provide for depositions, court costs when we cannot get through a motion to sue in forma pauperis (filing fees, jury fees, subpoena fees, etc.) and the client really cannot afford these costs.

2. Amount expended for costs above:

Only about $50, to $100. because cannot deplete the fund for the many other litigation costs which must be met.

3. Short statement explaining why more funds are not budgeted for the cost of bonds:

Very simply stated, the budget grants are not adequate.

4. Number of cases handled each month requiring a bond:

We cannot answer this question accurately. In the last month we have handled ten eviction cases by filing very elaborate pleadings. Upon the filing of our answers, the opposing parties have made offers which upon communication to our clients, the clients have found attractive and settled.

5. Number of cases terminated because of inability to procure a bond:

Again, this number is not ascertainable. If the bond requirement was not there, perhaps our clients would not find the settlement offers so attractive. Landlord-tenant law in Colorado is medieval in character. Our legislative efforts this year met much opposition and the bill was killed. Consequently judge-made law is the only avenue at present; but the cases slip from us because of the practical judgments our clients find it necessary to make.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client.

7. Statement of situations requiring the posting of a bond in your state.

In Colorado "evictions" are commenced judicially pursuant to CRS (1963) 58-1-10. There is no posting of a bond pre-condition necessary for either party at trial. There are requirements of notice. CRS (1963) 58-1-7 described that notice in writing within fixed time periods according to the nature of the tenancy is necessary. This is for termination other than for non-payment of rent. Evictions for non-payment of rent are processed pursuant to CRS (1963) 58-1-8. Jurisdiction of the Courts is described in CRS (1963) 58-1-9, revision in Vol. 9 of CRS.

In Colorado, however, CRS (1963) 58-1-4 does provide that if either party requests a delay in trial longer than five days, it is within the discretion of the court upon good cause shown to require the posting of bond.

On appeal, CRS (L. 64) 58-1-18 requires the posting of a bond for all costs and damages which may accrue to the adverse party in order to stay proceedings on the judgment more than forty-eight hours. In addition, CRS (L. 64) 58-1-19 requires the defendant to deposit with the court the amount of rent found due and specified in the judgment in order to pursue his appeal.

AFFIDAVIT

STATE OF COLORADO,
CITY AND COUNTY OF DENVER, *ss.*:

TO WHOM IT MAY CONCERN:

I, RICHARD F. HENNESSEY, having been duly sworn, depose and say that:

1. I received a Doctor of Jurisprudence Degree from the Notre Dame Law School, University of Notre Dame, Notre Dame, Indiana, and thereafter received a Reginald Heber Smith Community Lawyer Fellowship from the University of Pennsylvania Law School for the purpose of study of the legal problems of the poor and engaging in legal services to the poor and disadvantaged.

2. I am a member of the Bar of the State of Colorado and have been an attorney for the Legal Aid Society of Metropolitan Denver, 1375 Delaware Street, Denver, Colorado 80204, for one year. During this time, I have been working solely with providing legal counsel and representation to persons who qualify for legal services and who are therefore, by definition, destitute.

3. In Colorado, C.R.S. (1963) 58-1-4 provides that if either party to a suit for unlawful possession of land requests a delay in trial longer than five days after the answer is due (which is five days after service of summons and complaint), it is within the discretion of the court upon good cause shown to require the posting of bond. On appeal, C.R.S. (L. '64) 58-1-18 requires the posting of a bond for all costs and damages which *may* accrue to the adverse party in order to stay proceedings on the judgment more than forty-eight hours. In addition, C.R.S. (L. '64) 58-1-19 requires the defendant to deposit with the court the amount of rent found due and specified in the judgment in order to pursue his appeal.

4. I have represented numerous persons, who, because of their poverty, were not able to plan for, in pursuing their judicial claims, the posting of bond in cases covered by the statutes mentioned in paragraph 3 above.

5. The Legal Aid Society of Metropolitan Denver does not have funds available for the posting of such bonds.

6. Due to these requirements of posting bond, I have not been able to give effective legal counsel and representation to my clients in diligently pursuing claims which are meritorious and just.

RICHARD F. HENNESSEY

Subscribed and sworn to before me this 26th day of June, 1969.

Merlyn H. Kinchelow
Notary Public

My commission expires
November 17, 1971

INDIANA

STATEMENT CONCERNING THE POSTING OF BONDS FOR STAYS, APPEALS, VACATING OF JUDGMENTS AND PROVISIONAL REMEDIES

1. Amount of funds allocated to costs of bonds:

Approximately $500.00 is allocated for litigation expenses of which bonds are included.

2. Amount expended for costs above:

Approximately $100.00 per year.

3. Short statement explaining why more funds are not budgeted for the cost of bonds:

More funds are not budgeted for the cost of bonds because the O.E.O. has not increased our budget to allow for litigation cost.

4. Number of cases handled each month requiring a bond:

Approximately 15 cases each month require a bond.

5. Number of cases terminated because of inability to procure a bond:

Almost every case that requires a bond is terminated due to the inability to procure a bond.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client.

7. Statement of situations requiring the posting of a bond in your state:

Briefly they are as follows:

a. In an eviction action, if the plaintiff files an affidavit for immediate possession and a writ for possession the defendant is required to post a bond under Burns Indiana Statutes Annotated 3-1306. The tenant failing to post a bond will be evicted.

b. A bond is required before a court enters a temporary restraining order on temporary injunction pursuant to Burns Indiana Statute 3-2107.

c. A bond is not required to file an appeal, however, a bond is required in order to stay the enforcement of any judgment or interlocutory order, Supreme Court Rule 2-3.

All of the above bonds are required and if a waiver is not granted under the statute or rules of the Indiana Supreme Court.

AFFIDAVIT

STATE OF INDIANA)
COUNTY OF LAKE)

I, J. ROBERT MIERTSCHIN, JR., first being duly sworn under oath depose and say:

1. That I am an attorney for the Legal Aid Society of Gary, Inc., Gary, Indiana.

2. That the requirements of posting bonds has been a detriment to our clients.

3. That Legal Aid cliental do not have the funds to provide for a bond and are thereby prohibited effective representation and immediate relief.

Affiant, verily believes that the foregoing is true and accurate to the best of his knowledge.

J. Robert Miertschin, Jr.
Legal Aid Society of Gary, Inc.
738 Broadway, Gary, Indiana

Subscribed and sworn to before this ..... day of July, 1969.

Nancy Marie McQuen
Notary Public

My Commission Expires:

August 22, 1972

IOWA

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

1. Amount of funds allocated to costs of bonds:

   $2,000 lump sum for all litigation costs.

2. Amount expended for costs above:

   100%.

3. Short statement explaining why more funds are not budgeted for the cost of bonds:

   Total budget is too small to increase this cost.

4. Number of cases handled each month requiring a bond:

   6-7 per year.

5. Number of cases terminated because of inability to procure a bond:

   We have no figures on this, would guess several per year.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client:

   No Affidavit.

7. Statement of situations requiring the posting of a bond in your state:

   Replevin; Appeal from Summary Eviction.

Duane E. Woodworth, Director
Black Hawk County Legal Aid Society
Waterloo, Iowa

LOUISIANA

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

1. Amount of funds allocated to costs of bonds:

   $5,000 for court costs. There is no breakdown of types of court costs, such as bankruptcy fees, divorce fees, etc.

2. Amount expended for costs above:

   None

3. Short statement explaining why more funds are not budgeted for the cost of bonds:

   O.E.O. restrictions and needs in other areas for more funds.

4. Number of cases handled each month requiring a bond:

   None

5. Number of cases terminated because of inability to procure a bond:

   Unknown—neighborhood attorneys take position that procedures on appeal, particularly bond requirements, are so onerous that appeals are, as a practical matter, nonexistent.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client:

   See attached.

7. Statement of situations requiring the posting of a bond in your state:

See attached memorandum. Memorandum is written as an advocate's presentation. The arguments put forth have never been successfully raised in Louisiana.

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, a Notary, appeared the undersigned, JEFFREY B. SCHWARTZ, who declared under oath that:

1. I am a staff attorney with the New Orleans Legal Assistance Corporation, an OEO-funded legal services office rendering free legal advice and services to the poor.

2. The New Orleans Legal Assistance Corporation (NOLAC) has five neighborhood offices and one main office with a complement of nine full time attorneys.

3. NOLAC accepts on the average about sixty or seventy cases a year involving evictions by a landlord of a tenant-client.

4. Although the records of NOLAC do not reveal how many of these cases were actually defended by NOLAC attorneys in summary state eviction proceedings, personal familiarity with these cases leads to an estimate that a large portion of the sixty or seventy cases did involve attempted defenses, a high proportion being unsuccessful, in state court.

5. NOLAC attorneys have *never* appealed a judgment of eviction by the City Court.

6. The reason for failure to appeal in any case, even though in some instances the attorney does believe that there is cause for a reversal of the lower court decision of eviction, is the onerous requirements for taking an appeal.

7. Primary among these onerous requirements for the indigent clients of NOLAC is the requirement that the tenant-appellant post security in sufficient amount to protect the landlord against all damages the landlord may sustain as a result of the appeal. LSA-C.C.P. Art. 4735. Being indigent, NOLAC's clients are unable to post the security for damage and consequently, are effectively prohibited from appealing a decision of eviction.

JEFFREY B. SCHWARTZ
New Orleans Legal Assistance Corp.
605 Carondelet Building
New Orleans, Louisiana

Sworn to and subscribed before me
this 23rd day of July 1969.

EARL J. AMEDEE
Notary Public

NEW ORLEANS LEGAL ASSISTANCE
CORPORATION
605 Carondelet Building
New Orleans, La. 70130

MEMORANDUM

Reform in the area of landlord-tenant relations is going to require defense at the trial level and appeals if necessary. In the event of an order to vacate, the initial concern must be to maintain the client in possession. Once the tenant vacates the premises, the question of his *right* to possession of the premises becomes moot. (Of course, the client's leaving the premises does not affect any affirmative actions for damages such as a suit in tort.)

In an eviction suit, the procedures to obtain a suspensive appeal are onerous and must be carefully complied with. LSA-C.C.P. Art. 4735. The necessary procedures are:

1. A sworn answer by the defendant to the rule;

2. The pleading in the answer of an affirmative defense entitling defendant to retain possession of the premises; and

3. Within 24 hours after the rendition of the judgment of eviction,

   (a) Apply for the appeal

   (b) File appeal bonds.

Although cumbersome and sticky, the only one of these requirements that presents a substantial burden, is the furnishing of an appeal bond. Article 4735 provides,

"The amount of the suspensive appeal bond shall be determined by the court in an amount sufficient to protect the appellee against all such damages as he may sustain as a result of the appeal."

The possible damages sustainable as a result of the appeal are as follows:

1. Loss of use of premises from date of judgment by trial court until date of final appellate judgment by the appellate court.

2. Cost of the appeal.

Considering the second point as to the cost of appeal first, it is clear that a person entitled to proceed in forma pauperis under Article 5185 is entitled to a devolutive appeal and to apply for supervisory writs without cost. LSA-C.C.P. 5185. Article 5185 goes on to state, however, that such an indigent

"is not entitled to a suspensive appeal, or to an order or judgment required by law to be conditioned on his furnishing security other than for costs, unless he furnishes the necessary security therefor."

The case law makes it clear that the portion of a bond relating to the costs of the appeal as opposed to security for damages is not required of an indigent. See comment (f) to Article 2124 and cases cited therein. Thus, our clients do not have to file bond to cover the costs of an appeal.

The remaining point as to a bond for damages suffered during the pendency of the appeal is more difficult to deal with. Article 2124 states the security be furnished for an appeal. The security to be furnished for a suspensive appeal is as follows:

"(1) * * *;

(2) when the judgment distributes a fund in custodia legis, only security sufficient to secure the payment of costs is required; and

(3) in all other cases, the security shall be fixed by the trial court at an amount sufficient to assure the satisfaction of the judgment, together with damages for the delay resulting from the suspension of the execution."

Since the judgment is possession of the premises, there appears to be no danger that if the appeal is unsuccessful, the premises will not be delivered. The only damage, therefore, is due to the delay. This will probably be measured by the monthly rent being paid, though allegations of additional damage might be encountered.

The most desirable procedure from our client's point of view, if this becomes the ultimate issue in controversy as to the appeal bond, is to pay the monthly rental periodically into court as it accrues. This arrangement has the advantage of leverage on the lessor to appeal and to pursue the matter without delay yet still affords him opportunity to seek dissolution of suspensive appeal should lessee fail to pay. The order for a suspensive appeal could be so framed.

It should be noted in making the argument that periodic payment in court of the accrued rent is sufficient, that comment (c) to Article 2124 states that,

"Subparagraph 3 . . . is taken in principal from Fed. Rule 73(d). It is flexible in that it gives the court a wide discretion in fixing the bond in cases not involving a money judgment."

Another argument, that is appealing to me, (for saying) that no suspensive appeal bond is appropriate is that the periodic payment of the accrued rent into court constitutes, under subparagraph 2 above, a custodia legis. Therefore, under the prevailing law no appeal bond for damages is necessary. See paragraph (f) of comments to Article 2124.

It should be argued, that the requirement of any appeal bond beyond the periodic payment into court of the accrued rent is in violation of both State Constitution, Article I, §§2&6, (due process and open access) and the United States Constitution, the Equal Protection Clause provision of the Fourteenth Amendment because the security effectively bars indigents from appealing. *Griffin* v. *Illinois; Williams* v. *Shaffer* (Douglas dissenting).

MAINE

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

Pine Tree Legal Assistance, Inc. has no specific moneys allocated for the cost of bonds but pays for those few bonds which we do file from our general court cost fund. As far as I know we have handled very few cases requiring the posting of a bond and have terminated none because of inability to procure a bond.

Me. Rev. Stat. Ann. tit. 14, §1903 (1964) requires the posting of a bond upon an appeal taken from the District Court if the appellee so requests. However, there is no bond required for appeal to the Law Court, the highest court in Maine, from the Superior Court which is the higher of the two trial courts in the State. Me. R. Civ.

P. 62 e. However, the civil rule for the issuance for a restraining order or preliminary injunction requires the giving of security by the applicant therefore. Me. R. Civ. P. 65 c.

I hope this will be sufficient for your purposes, and we are, of course, hoping that there will be a favorable decision in the Simmons case. It would be much appreciated if you could forward to us a copy of the amicus brief which you will file in that case.

July 8, 1969

Robert Edmont Mittel
Director Test Case Unit
Pine Tree Legal Assistance, Inc.
Portland, Maine

MICHIGAN

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

1. Amount of funds allocated to costs of bonds:

   None

2. Amount expended for costs above:

   None

3. Short statement explaining why more funds are not budgeted for the cost of bonds:

   No provision in our funding for bonds.

4. Number of cases handled each month requiring a bond:

   15

5. Number of cases terminated because of inability to procure a bond:

   35 to date this year.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client:

   See attached.

7. Statement of situations requiring the posting of a bond in your state:

   All of the 35 cases dropped before appeal for lack of bond were appeals from landlord-tenant court, where waiver was requested and denied, and offers to pay current rentals were refused as bond. Michigan law formerly required the posting of 9 months rent as bond on *appeal.* New statute effective October, 1968 changed that requirement to reasonable bond. M.S.A. §27A.5670 Landlord-tenant division judges have consistently construed this to require a cash deposit in the amount of the judgment below or more in spite of Common Pleas instructions reiterating the statutory language. Circuit court judges usually on appeal will accept paying of current rentals into court as proper bond.

INHIBITION ON JURY TRIAL

In Revised Rules of the Common Pleas Court of Detroit, Landlord-Tenant Division, effective May 15, 1969,

a tenant must pay current rentals into escrow if he demands a jury trial and if said trial cannot be held "forthwith." Rule 7. This court-rule imposed escrow provision operates as a bond to secure the landlord's claim for rent before a tenant may obtain a jury trial. In spite of Common Pleas instructions to the contrary, Landlord-Tenant Division judges construe "current" rentals to be all rent claimed.

AFFIDAVIT

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

MAX L. HARDEMAN, being duly sworn deposes and says that for the past year he has served as rent strike Coordinator for Neighborhood Legal Services in Detroit, Michigan.

Deponent says further that there is a bond requirement for appealing judgments from our local "eviction court" (Landlord-Tenant Court).

Deponent says further that even when the bond requirement has been met that clerks of the "Local eviction court" have refused to file the bond.

Deponent says further that the bond may be satisfied by securing sureties. That when personal sureties are obtained it is necessary for them to take an oath before a judge of that Court. That deponent has been informed and believes that the judges of that Court have refused to administer said oath when personal sureties have appeared before them and requested it.

Deponent says further that many of these defendants receive no notice of the Court proceedings until they are over.

Deponent says further that the necessity for posting bonds coupled with the lack of notice of the Court proceedings prevents many defendants from ever having a day in Court.

Further deponent saith not.

MAX L. HARDEMAN

Dated: July 25, 1969

Subscribed and sworn to before me
this 25th day of July, 1969.

LORAL D. VIGLIOTTI, Notary Public
County of Wayne, State of Michigan
My Commission Expires: Dec. 9, 1972

MISSISSIPPI

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

Few of our clients pay rent, and evictions in rural areas are not frequent; so it is hard to draw any conclusions.

M. B. Trister
North Mississippi Rural Legal Services
Oxford, Mississippi

NORTH CAROLINA

Statement Concerning the Posting of Bonds for Stays, Appeals, Vacating of Judgments and Provisional Remedies

Letter July 4, 1969:

In answer to your letter of June 19, 1969, we regret to report that our Housing Division, as such, is only a few weeks old and we have done no trial work in this area as of this time. However, we are working on such a case and obtained a brief used by the Legal Aid office in Charlotte, North Carolina, to further our efforts. I thought you might be interested in seeing the part of the brief dealing with the constitutionality of our bond statute, NCGS §42-34. If someone could benefit from this, please pass it along.

In order to appeal from a summary ejectment, NCGS requires that:

> "... but no execution commanding the removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an under-

taking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land."

At present this statute is still valid as it has not gone to the North Carolina Supreme Court. There was no appeal in the *Lessie Mae Tucker* v. *Bumgardner* case.

I hope this information will be of some value to you.

Bill Marshall
Housing Division
The Legal Aid Society of Forsyth County
Winston-Salem, North Carolina

TEXAS

STATEMENT CONCERNING THE POSTING OF BONDS FOR STAYS, APPEALS, VACATING OF JUDGMENTS AND PROVISIONAL REMEDIES

1. Amount of funds allocated to costs of bonds:

   None.

2. Amount expended for costs above:

   N/A

3. Short statement explaining why more funds are not budgeted for the costs of bonds:

   N/A

4. Number of cases handled each month requiring a bond:

   One or two.

5. Number of cases terminated because of inability to procure a bond:

   None.

6. Prepare a short affidavit stating (if true) that the necessity of posting bonds has prevented the giving of effective representation for the client:

   N/A

7. Statement of situations requiring the posting of a bond in your state.

   Can usually be waived if it is a problem.

Frank P. Christian, Director
Bexar County Legal Aid Association
San Antonio, Texas